THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE D. APPA RAO

WRIT PETITION Nos.24826 & 135 of 2006
And
WRIT APPEAL Nos. 435 & 2371 of 2005

Date: 22 -08-2006

W.P. No.24826 of 2006

Between:

K.G.V. Krishnaiah

… PETITIONER

AND

The Commissioner, Endowments Department,
Andhra Pradesh, Hyderabad & another.

… RESPONDENTS

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE D. APPA RAO

WRIT PETITION Nos.24826 & 135 of 2006
And
WRIT APPEAL Nos. 435 & 2371 of 2005

COMMON ORDER:- (Per BPR,J)

Since all these three matters, filed at the instance of the same petitioner, are inter-connected and virtually common questions are involved, they are being taken up together for disposal.

The writ petitioner is working as Deputy Executive Officer. In the first case i.e., WP.No.24826 of 2005, he seeks to assail two orders of the even date viz., 17.11.2005 issued by the Commissioner, Endowment Department, Hyderabad, transferring him from 2nd respondent institution i.e., Sri Brahmaramba Mallikarjuna Swamy Devasthanam, Srisailam, Kurnool District to Sri Tirupathamma Ammavari Temple, Penuganchiprolu, and consequential proceedings relieving him from duties at the said place.

As the interlocutory order was passed in WPMP.No.31980 of 2005 in WP.No.24826 of 2005 dated 23.11.2005, suspending the aforesaid two impugned orders, the authorities viz., the Commissioner of Endowments and the institution concerned filed WA.No.2371 of 2005.

In WP.No.135 of 2005, the petitioner seeks a writ of Mandamus challenging the impugned proceedings dated 07.01.2005, whereby the

authorities rejected his claim for promotion as Executive Officer in the cadre of Regional Joint Commissioner.

The said writ petitioner filed WA.No.435 of 2005, assailing the order of the learned Single Judge, dismissing WP.No.4091 of 2005, wherein he sought to assail the proceedings in Memo No.56928/Endts.II(1)/2003-2, dated 03.04.2004, in view of the report of 3rd respondent therein, dated 09.10.2004, whereby a condition was sought to be added i.e., the sanction for the post of Deputy Executive Officer to which the petitioner was appointed is for a limited purpose i.e., for one year.

Heard Sri Gangaiah Naidu, learned Senior Counsel, appearing on behalf of the petitioner – employee and the learned Advocate General appearing on behalf of the respondents – authorities.

Few facts, which are necessary for the purpose of disposal of all these cases are that the petitioner was initially appointed as LDC in the year 1971 in Sri Bhramaramba Mallikarjuna Swamy Devasthanam. Later, he was promoted as UDC in 1979 and again as Office Superintendent in 1990. Later, he was promoted as P.A. to the Executive Officer, which is equivalent to Assistant Commissioner, on 21.01.1999. Meanwhile, the Government, as per Memo dated 15.03.2004, accorded permission to the Commissioner, Endowments to convert the post of Executive Engineer (Electrical) into Deputy Executive Officer and consequently, the Commissioner of Endowments passed orders on 18.03.2004, permitting the Executive Officer to promote the senior most P.A. to Executive Officer as Deputy Executive Officer. Following the same, the Executive Officer of the temple passed orders on 22.03.2004, promoting the petitioner as Deputy Executive Officer. Subsequently, as per the impugned Memo dated 03.04.2004, Government sought to limit the sanction, which was accorded earlier for such promotion for a period of one year, from the

date of issue of the said memo or on completion of assignment, whichever is earlier. This, according to the petitioner, is totally illegal and unsustainable. In response thereto, Executive Officer of the temple passed orders on 06.05.2004 restricting the petitioner's service in the said post (Deputy Executive Officer) for a period of one year i.e., up to 05.05.2005.

Thereupon, the petitioner submitted a representation on 06.10.2004 seeking cancellation of the subsequent amendment orders of the Government dated 03.04.2004. It appears that the Executive Officer of the temple submitted a report on 09.10.2004 in favour of the petitioner for continuing him in the post of Deputy Executive Officer duly cancelling the orders dated 03.04.2004. Since no action was forthcoming, the petitioner filed WP.No.4091 of 2005 to declare the action of the respondents in not cancelling the said Memo dated 03.04.2004, on the basis of the report of the Executive Officer dated 09.10.2004, as illegal.

The learned Single Judge, after taking into consideration the respective submissions, without entering into the merits of the case, disposed of the said writ petition vide orders dated 03.03.2005, directing the 1st respondent i.e., the Government to take appropriate decision in accordance with law, with reference to the report submitted by the Additional Commissioner, Executive Officer, dated 09.10.2005 and also the representation of the petitioner dated 06.10.2004 on or before 17.03.2005 and till then the petitioner shall not be reverted and be continued in the same post.

Aggrieved thereby, the petitioner filed WA.No.435 of 2005 inter alia contending that this Court ought to have gone into the correctness and validity of the impugned Memo dated 03.04.2004 rather than giving any such directions. Subsequently, the said appeal has also been taken up with these matters.

Prior to filing of WP.No.4091 of 2005, the petitioner filed another WP.No.22717 of 2004, seeking a direction to the authorities concerned for his promotion as Executive Officer in terms of Section 29(3) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act (for short "the Act") which mandates 20% of vacancies of Executive Officers to be filled up with temple employees. The said writ petition was disposed of on 09.12.2004 directing the Government to pass appropriate orders keeping in view the aforesaid provision. However, as per the proceedings dated 07.01.2005, the State Government rejected the request of the petitioner for promotion to the Executive Officer inter alia firstly on the ground that the aforesaid provision has no application to the cadres of Assistant Commissioner, Deputy Commissioner and Joint Commissioner (E.O.), secondly, the post of the Deputy Executive Officer, which is held by the petitioner is only a temporary post accorded for a period of one year and lastly that the rules framed in G.O.Ms.No.245, dated 08.05.2002 are applicable, but there is no provision for such promotion for temple employees. Thereupon, the petitioner filed another WP.No.135 of 2005 challenging the order dated 07.01.2005, rejecting his claim for promotion as Executive Officer and the same is also taken up along with this batch.

Since the petitioner was transferred from Srisailam to Penuganchiprolu in Krishna District by the impugned order dated 17.11.2005, which is also the subject matter of another WP.No.24826 of 2005, it has also been tagged on with this batch of cases for convenient disposal. Pending the said writ petition, the learned Single Judge granted interim suspension of the orders dated 17.11.2005. Hence, the authorities filed WA.No.2371 of 2005, which is also the subject matter of these cases.

Sri Gangaiah Naidu, learned Senior Counsel, appearing on

behalf of the petitioner submits that having regard to the proceedings issued promoting the petitioner as Deputy Executive Officer on 22.03.2004 in terms of the permission accorded by the Government on 15.03.2004, the petitioner being a temporary employee would squarely fall within the parameters as contemplated under Section 29 (3) of the Act and he being a temporary employee necessarily the promotion ought to have been given and further submits that the subsequent orders of the Government restricting the promotion for a period of one year is also totally vitiated and would affect the substantial right of the petitioner and consequently, even the order of transfer is only made with a view to deprive his legitimate right. Hence, the impugned order in trying to affect the chances of promotion and not considering from a proper perspective is wholly unsustainable.

Learned Advocate General, appearing on behalf of the respondents, sought to sustain the impugned order mainly on the ground that the promotion of the petitioner as Deputy Executive Officer is neither regular one nor would confer any right in his favour to enable him to seek any such further promotion. Further, the promotion and also the consequent orders are policy decisions, which cannot be assailed by the petitioner. Even otherwise, the petitioner would know the consideration of such promotions. Hence, the entire claim made by the petitioner is totally unsustainable.

Having heard the counsel on either side and also on a perusal of the material, the ultimate question which boiled down from all these chequered events leading to filing of these cases is as to whether the petitioner is eligible and his case can be considered for continuance as Deputy Executive Officer and also for promotion to the post of Executive Officer.

There is no dispute in regard to the chequered events, which has landed the petitioner ultimately in the post of Deputy Executive Officer.

At the relevant point of time the petitioner was working as PA to Executive Officer, having promoted on 21.01.1999. However, it is only having regard to the decision of the Government in memo dated 15.03.2004, whereby permission was granted to the Commissioner to convert the post of Executive Officer (Electrical) into Deputy Executive Officer. That itself shows there is no such panel post of a Deputy Executive Officer and it is only in the exigency of situation, the Government, as a policy decision, granted permission. Following this, the Commissioner initially permitted the Executive Officer on 18.03.2004 to promote the petitioner as Deputy Executive Officer and later promotion was given to the petitioner on 22.03.2004 as Deputy Executive Officer. It is with these proceedings especially as to according of permission, the Government reinstated the petitioner by a memo dated 03.04.2004 limiting the said sanction for a period of one year from the date of issuance of the said memo or on completion of assignment, whichever is earlier. Therefore, the Executive Officer ultimately restricted the period for one year i.e., up to 05.05.2005, as per proceedings dated 06.05.2004. It is at this stage, the petitioner sought to seek such further promotion and also for his continuance in the said post of Deputy Executive Officer.

From these circumstances, the tell-tale of the story remains that it is only as a result of the permission granted by the Government, the existing post of Executive Officer was sought to be converted as Deputy Executive Officer, in view of the need and exigency. Therefore, it is crystal clear that the said post of Deputy Executive Officer is not a regular one nor in the cadre available as such. Such a decision is a policy matter and therefore, the petitioner can, in no circumstances, said to have made any claim in this regard. It is only for such post, which has been created having regard to the necessity, need and exigency, the petitioner was promoted as Deputy Executive Officer and not otherwise and further the Government sought to restrict

the said post for a period of only one year at the discretion of the Executive Officer of the temple depending on the completion of the assignment. Therefore, the Executive Officer passed orders on 06.05.2004 allowing the petitioner to work till 05.05.2005. From these proceedings, no such right can be granted in favour of the petitioner, who is posted for such post, which virtually can be termed as a temporary or ad hoc and without creating any enforceable right either in favour of the petitioner or for that matter for any other employees similarly placed to seek either appointment to such post or to post such posting or promotion as a stepping stone for any further promotion.

Though an attempt has been made on behalf of the petitioner to place reliance on Section 29(3) of the Act, which mandates 20% of the vacancies in each grade of the Executive Officer shall have to be filled up with the employees of the institutions, it is this provision which enables the petitioner to lay a claim for promotion.

According to the respondents, it is their case that the said provision mandating 20% of vacancies in each grade of Executive Officer i.e., Grade I, II and III is to be filed up by employees belonging to the institutions of endowments of the prescribed cadre i.e., Junior Assistant as Executive officer Grade III, Senior Assistant as Executive Officer Grade II and Superintendent as Executive Officer Grade I. As per G.O.Ms.No.461, dated 23.05.1991 and G.O.Ms.No.262, dated 20.05.2002, the cycle of two vacancies for appointment as Grades I, II and III is other than direct recruitment. That apart, the temple employees published under Section 6(a), (b) and (c) of the said Act other than the Regional Joint Commissioner and Deputy Commissioner Cadre Institutions, shall be appointed as Executive Officers of Grades I, II and III by transfer of service. Therefore, the temple employees shall be appointed by transfer of service or continuance to the post of Executive Officer Grade I, II and III and not in the cadre of Executive Officer, which are held by the Regional Joint

Commissioner. The petitioner, according to them, is an employee of Sri Brahmaramba Mallikarjuna Swamy Devasthanam, Srisailam, and he was appointed in the post of P.A. to Executive Officer on 21.01.1999. Therefore, there is no provision to appoint the petitioner as Deputy Executive Officer, presently held by him.

Without going into much details on this aspect or even certain challenges appear to have been made by certain employees against G.O.Ms.No.395, dated 14.06.2000 and certain matters being pending before the A.P. Administrative Tribunal and other consequential proceedings, on the face of it, the petitioner can lay any claim having enforceable right either to the post which is held by him for further promotion as Executive Officer, since the post itself is a temporary in its nature. Even as per the decision of the Government, it is purely beyond the reach of this Court under the parameters of the extraordinary jurisdiction to lead or let in hands. In regard to such correctness thereof, it being an exclusive, at its own discretion, as a sole contributory, the petitioner has absolutely no semblance of any right or interest to claim for either such post or for promotion as Executive Officer.

However, as pointed out above, even as per Section 29(3) of the Act, the petitioner no where falls well within the feeder cadre or post to enable him to seek any such promotion. Thus, we do not find any merit in the entire claim sought to be made by the petitioner.

Coming to the impugned proceedings dated 17.11.2005, it is now well established that the transfer is an incidence of service and the courts in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India cannot possibly try to intermeddle with any such proceedings nor can the petitioner make any claim on a particular posting as such.

Hence, we do not find any merit in the contentions urged in regard to the challenge made against the orders of transfer. Consequently, the claim of the petitioner stands rejected and both WP.Nos.24826 and 135 of 2005 and WA.No.435 of 2005 are dismissed and WA.No.2371 of 2005 automatically stands allowed, having regard to the dismissal of the main writ petition i.e., WP.No.24826 of 2005.

Having regard to the fact that only ten months service is left to the date of retirement, the appellant in W.A.No.435 of 2006 is permitted to file an application in this regard before the respondents and the same shall be considered in proper perspective.

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B. PRAKASH RAO, J

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D. APPA RAO, J

Date:22-08-2006
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